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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,967	01/28/2004	Jack Cash JR.	001-295	1966
29569	7590	07/06/2006	EXAMINER	
JEFFREY FURR 253 N. MAIN STREET JOHNSTOWN, OH 43031			O'CONNOR, CARY E	
			ART UNIT	PAPER NUMBER
			3732	

DATE MAILED: 07/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/707,967

Applicant(s)

CASH, JACK

Examiner

Cary E. O'Connor

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1-20, the word "means" is preceded by the word(s) "pick-up", "connecting", audio production", and "amplifier" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claims 12-19 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: there are no steps claimed.

### ***Claim Rejections - 35 USC § 102***

Claims 1, 8, 9, 12 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Berube-Lauziere et al (2003/0143510). Berube-Lauziere shows a dental device comprising a dental instrument A attached to a pick-up means 12 through a connecting means 18, 20, where the pick-up means is connected to an amplifier 58 which is connected to an audio production means 56. Berube-Lauziere does not

Art Unit: 3732

specifically disclose that the instrument is a scaler but states, in paragraph 0026, that the instrument may be "various apparatuses A used for removing dental tartar S by way of ultrasounds or any other suitable removable technique." It is well known in the art that some dental scalers use ultrasound to remove tartar, and scalers are used to remove tartar. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a scaler in the device of Berube-Lauziere if removal of dental tartar is desired. As to claims 8, 9 and 19, note the power supply 48 and may be a battery (paragraph 0028, lines 1-6).

Claims 2 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berube-Lauziere et al (2003/0143510) in view of Jensen (6,491,522). Berube-Lauziere does not disclose that the audio production means is headphones. Jensen shows a dental diagnostic system having a speaker 101 or headphone (column 5, lines 2-5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the speaker of Berube-Lauziere with headphones, as taught by Jensen, because headphones and speakers are interchangeable.

Claims 3, 5, 10, 11, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berube-Lauziere et al (2003/0143510) in view of Moore (2004/0077974). Berube-Lauziere does not disclose that the amplifier has a volume control or the connections between various elements are wireless. Moore shows a laparoscopic detection device that emits an audible signal wherein the amplifier/speaker 32 includes a volume control means 34. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the

Art Unit: 3732

amplifier and/or audio production means of Berube-Lauziere et al with a volume control means, as taught by Moore, so that the volume can be adjusted. Moore also teaches that the device is wireless (paragraph 0011). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device of Berube-Lauziere wireless, as taught by Moore, in order to provide hands-free convenience and an enhanced diagnostic tool.

Claims 7 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berube-Lauziere et al (2003/0143510) in view of Siemons (2005/0058962). Berube-Lauziere discloses that the device may be small and portable (paragraph 0028). The device is not disclosed as having a clip. Siemons shows a dental device which is small and portable. The device may include a clip (paragraph 26). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the casing 34 of Berube-Lauziere et al with a clip, as taught by Siemons, so that the casing may be held in a location that is convenient for the dentist.

Claims 6 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berube-Lauziere et al (2003/0143510) in view of Peters (4,383,534). Berube-Lauziere does not disclose that the audio production means is connected to the amplifier means through a plug inserted into a plug jack. Peters shows a medical device which has audio output. The speaker and amplifier are connected by a plug inserted into an audio jack 104. It would have been obvious to one of ordinary skill in the art at the time the invention was made to connect the amplifier and the audio production means of by a

Art Unit: 3732

plug inserted into an audio jack Berube-Lauziere, as taught by Peters, so that the audio production means may be removed from the casing, when desired.

### ***Allowable Subject Matter***

Claims 4 and 15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claim 20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because the term "means" is used.

Correction is required. See MPEP § 608.01(b).

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the


description: 7 (Fig. 1). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cary E. O'Connor whose telephone number is 571-272-4714. The examiner can normally be reached on M-Th 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3732

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Cary E. O'Connor  
Primary Examiner  
Art Unit 3732

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